

(34) Consideration of agreements involving performance bonds to a conference from a conference member guaranteeing compliance by the member with the rules and regulations of the conference.

(35) Consideration of agreements between members of two or more conferences or other rate-fixing agreements to discuss and agree upon common self-policing systems and cargo inspection services.

(b) If interested persons allege that a categorically-excluded action will have a significant environmental effect (e.g., increased or decreased air, water or noise pollution; use of recyclables; use of fossil fuels or energy), they shall, by written submission to the Commission's Office of Environmental Analysis (OEA), explain in detail their reasons. The OEA shall review these submissions and determine, not later than ten (10) days after receipt, whether to prepare an environmental assessment. If the OEA determines not to prepare an environmental assessment, such persons may petition the Commission for review of the OEA's decision within ten (10) days of receipt of notice of such determination.

(c) If the OEA determines that the individual or cumulative effect of a particular action otherwise categorically excluded offers a reasonable potential of having a significant environmental impact, it shall prepare an environmental assessment pursuant to § 504.5.

[49 FR 44415, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984; 56 FR 50662, Oct. 8, 1991; 60 FR 27229, May 23, 1995; 61 FR 66617, Dec. 18, 1996]

#### **§ 504.5 Environmental assessments.**

(a) Every Commission action not specifically excluded under § 504.4 shall be subject to an environmental assessment.

(b) The OEA may publish in the FEDERAL REGISTER a notice of intent to prepare an environmental assessment briefly describing the nature of the potential or proposed action and inviting written comments to aid in the preparation of the environmental assessment and early identification of the significant environmental issues. Such comments must be received by the Commission no later than ten (10) days

from the date of publication of the notice in the FEDERAL REGISTER.

#### **§ 504.6 Finding of no significant impact.**

(a) If upon completion of an environmental assessment, the OEA determines that a potential or proposed action will not have a significant impact on the quality of the human environment of the United States or of the global commons, a finding of no significant impact shall be prepared and notice of its availability published in the FEDERAL REGISTER. This document shall include the environmental assessment or a summary of it, and shall briefly present the reasons why the potential or proposed action, not otherwise excluded under § 504.4 will not have a significant effect on the human environment and why, therefore, an environmental impact statement (EIS) will not be prepared.

(b) Petitions for review of a finding of no significant impact must be received by the Commission within ten (10) days from the date of publication of the notice of its availability in the FEDERAL REGISTER. The Commission shall review the petitions and either deny them or order the OEA to prepare an EIS pursuant to § 504.7. The Commission shall, within ten (10) days of receipt of the petition, serve copies of its order upon all parties who filed comments concerning the potential or proposed action or who filed petitions for review.

#### **§ 504.7 Environmental impact statements.**

(a) *General.* (1) An environmental impact statement (EIS) shall be prepared by the OEA when the environmental assessment indicates that a potential or proposed action may have a significant impact upon the environment of the United States or the global commons.

(2) The EIS process will commence:

(i) For adjudicatory proceedings, when the Commission issues an order of investigation or a complaint is filed;

(ii) For rulemaking or legislative proposals, upon issuance of the proposal by the Commission; and

(iii) For other actions, the time the action is noticed in the FEDERAL REGISTER.

(3) The major decision points in the EIS process are:

(i) The issuance of an initial decision in those cases assigned to be heard by an Administrative Law Judge (ALJ); and

(ii) The issuance of the Commission's final decision or report on the action.

(4) The EIS shall consider potentially significant impacts upon the quality of the human environment of the United States and, in appropriate cases, upon the environment of the global commons outside the jurisdiction of any nation.

(b) *Draft environmental impact statements.* (1) The OEA will initially prepare a draft environmental impact statement (DEIS) in accordance with 40 CFR part 1502.

(2) The DEIS shall be distributed to every party to a Commission proceeding for which it was prepared. There will be no fee charged to such parties. One copy per person will also be provided to interested persons at their request. The fee charged such persons shall be that provided in § 503.43 of this chapter.

(3) Comments on the DEIS must be received by the Commission within ten (10) days of the date the Environmental Protection Agency (EPA) publishes in the FEDERAL REGISTER notice that the DEIS was filed with it. Sixteen copies shall be submitted as provided in § 504.3(a). Comments shall be as specific as possible and may address the adequacy of the DEIS or the merits of the alternatives discussed in it. All comments received will be made available to the public. Extensions of time for commenting on the DEIS may be granted by the Commission for up to ten (10) days if good cause is shown.

(c) *Final environmental impact statements.* (1) After receipt of comments on the DEIS, the OEA will prepare a final environmental impact statement (FEIS) pursuant to 40 CFR part 1502, which shall include a discussion of the possible alternative actions to a potential or proposed action. The FEIS will be distributed in the same manner as specified in paragraph (b)(2) of this section.

(2) The FEIS shall be prepared prior to the Commission's final decision and shall be filed with the Secretary, Federal Maritime Commission. Upon filing, it shall become part of the administrative record.

(3) For any Commission action which has been assigned to an ALJ for evidentiary hearing:

(i) The FEIS shall be submitted prior to the close of the record, and

(ii) The ALJ shall consider the environmental impacts and alternatives contained in the FEIS in preparing the initial decision.

(4)(i) For all proposed Commission actions, any party may, by petition to the Commission within ten (10) days following EPA's notice in the FEDERAL REGISTER, assert that the FEIS contains a substantial and material error of fact which can only be properly resolved by conducting an evidentiary hearing, and expressly request that such a hearing be held. Other parties may submit replies to the petition within ten (10) days of its receipt.

(ii) The Commission may delineate the issue(s) and refer them to an ALJ for expedited resolution or may elect to refer the petition to an ALJ for consideration.

(iii) The ALJ shall make findings of fact on the issue(s) and shall certify such findings to the Commission as a supplement to the FEIS. To the extent that such findings differ from the FEIS, it shall be modified by the supplement.

(iv) Discovery may be granted by the ALJ on a showing of good cause and, if granted, shall proceed on an expedited basis.

[49 FR 44415, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984]

#### **§ 504.8 Record of decision.**

The Commission shall consider each alternative described in the FEIS in its decisionmaking and review process. At the time of its final report or order, the Commission shall prepare a record of decision pursuant to 40 CFR 1505.2.

#### **§ 504.9 Information required by the Commission.**

(a) Upon request of OEA, a person filing a complaint, protest, petition or